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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,996	11/02/2000	William Edward James	25529-02	1327

7590 11/16/2007
William E James
11 Poinsett Ave, #3
Greenville, SC 29601

EXAMINER

NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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11/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.		Applicant(s)	
	09/674,996		JAMES, WILLIAM EDWARD	
	Examiner		Art Unit	
	Tam Nguyen		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22,23,26,27,36-38 and 40 is/are pending in the application.
- 4a) Of the above claim(s) 38 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22,23,26,27,36 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on June 14, 2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

Election/Restrictions

2. Claims 38 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species shown in Figures 7 and 17-19 respectively, there being no allowable generic or linking claim. In particular, Claim 38 discloses the limitation of a "means for returning employs energy sources external to a user" as shown in Fig. 7, and Claim 40 discloses the limitation of a "means for returning employs stored energy from a plurality of sources" as shown in Figs. 17-19.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 22, 23, 26, 27, 36 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In particular, claim 22 discloses a "means for returning said foot pedals to said forward step-down position at the end of each stride independently of stride length" but the specification does not appear to support this limitation or disclose this return means. Rather, the specification appears to disclose

that the means for returning said foot pedals to said forward step-down position at the end of each stride depends on the stride length assuming a fixed amount of air in the cylinders and there is no adjustment of the amount of air therein. That is, it appears that the movement of one pedal directly affects the movement of the other pedal equally. In other words, as one pedal moves backwards, the other moves forward at the same rate and thus distance. This is contradictory to the applicant's contention that a second pedal will always move forward to the step down position regardless of the distance or "stride length" that the first pedal moves backwards. Essentially, it is not clear to the examiner which components of the invention allow for a first foot pedal to return to the step-down position at the end of each stride independently of the stride length of the second foot pedal. Claims 23, 26, 27, 36 and 37 are also rejected for being dependent on a rejected base claim.

The examiner attempted to call the applicant on Tuesday, November 13, 2007, a few times to discuss the new ground of rejection but was unable to reach the applicant at either of the following numbers: (864) 233-8462 and (864) 569-9165. The applicant is encouraged to call the examiner at 571-272-5979 to expedite the prosecution.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and


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appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



LoAn Thanh, SPE



Tam M. Nguyen

November 13, 2007

LOAN H. THANH
SUPERVISORY EXAMINER